

**IN THE UNITED STATES DISTRICT COURT**  
**FOR THE DISTRICT OF DELAWARE**

**JOHN H. BENGGE, JR.,**

Petitioner,

V.

Civ. Act. No. 08-078-GMS

**MICHAEL DELOY**, Warden,  
and the **ATTORNEY GENERAL OF  
THE STATE OF DELAWARE**.

Respondents.

## MOTION FOR EXTENSION OF TIME

Pursuant to Rule 6 of the Federal Rules of Civil Procedure, respondents move for an extension of time in which to file an answer to the petition. In support thereof, respondents state the following:

1. The petitioner, John H. Benge, Jr., has applied for federal habeas relief, challenging his guilty plea in Superior Court to a weapons offense and two counts of criminal contempt of a protection from abuse order. By the terms of the Court's order, the answer is due to be filed on May 5, 2008. D.I. 7.

2. Counsel has recently completed work on several cases pending in this Court, the state courts, and the Third Circuit. However, work in some of those cases required longer than anticipated. In addition, counsel was out of the office most of the week of April 28 on personal business. As a result, the answer in the instant case has not yet been completed. In the next three weeks, counsel is assigned to complete work in five other cases, including two

capital cases. In light of that caseload, counsel anticipates that the answer in the instant case can be completed by May 30.

3. Under Habeas Rule 4, the Court has the discretion to give respondents an extension of time exceeding the 40-day limit in Civil Rule 81(a)(2). *Clutchette v. Rushen*, 770 F.2d 1469, 1473-74 & n.4 (9<sup>th</sup> Cir. 1985); *Kramer v. Jenkins*, 108 F.R.D. 429, 431-32 (N.D. Ill. 1985). The comment to Rule 4 expressly states that the district court has “the discretion to take into account various factors such as the respondent's workload” in determining the period of time that should be allowed to answer the petition.

4. This is respondents’ first request for an extension of time in this case.

5. Respondents submit that an extension of time to and including May 30, 2008, in which to file an answer is reasonable. Respondents submit herewith a proposed order.

/s/ Loren C. Meyers  
Deputy Attorney General  
Department of Justice  
820 N. French Street  
Wilmington, DE 19801  
(302) 577-8500  
Del. Bar. ID No. 2210

May 5, 2008

**RULE 7.1.1 CERTIFICATION**

I hereby certify that I have neither sought nor obtained the consent of the petitioner, who is in the custody of the Delaware Department of Correction and appearing *pro se*, to the subject matter of this motion.

/s/ Loren C. Meyers  
Deputy Attorney General

Counsel for Respondents

May 5, 2008

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**MICHAEL DELOY**, Warden,  
and the **ATTORNEY GENERAL**  
**OF THE STATE OF DELAWARE.**

Respondents.

## ORDER

This \_\_\_\_ day of \_\_\_\_\_, 2008,

WHEREAS, respondents having requested an extension of time in which to file an answer, and

WHEREAS, it appearing to the Court that the requested extension is timely made and good cause has been shown for the extension,

IT IS HEREBY ORDERED that respondents' answer shall be filed on or before May 30, 2008.

United States District Judge

**CERTIFICATE OF SERVICE**

I hereby certify that on May 5, 2008, I electronically filed a motion for extension of time with the Clerk of Court using CM/ECF. I also hereby certify that on May 5, 2008, I have caused to be delivered by the United States Postal Service the same document to the following non-registered participant:

John H. Bengé, Jr.  
SBI No. 494395  
Sussex Correctional Institution  
P.O. Box 500  
Georgetown, DE 19947

/s/ Loren C. Meyers  
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Department of Justice  
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